

**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION**

11 ANGEL ALFONSO CANCHE,  
12 Plaintiff  
13 v.

Case No. CV 17-4380-AS

## **MEMORANDUM OPINION**

14 NANCY A. BERRYHILL, Acting  
Commissioner Of Social  
15 Security,  
16 Defendant.

## PROCEEDINGS

20 On June 13, 2017, Plaintiff filed a Complaint seeking review  
21 of the denial of his application for Supplemental Security Income  
22 ("SSI"). (Dkt. No. 1). The parties have consented to proceed  
23 before the undersigned United States Magistrate Judge. (Dkt.  
24 Nos. 11, 12). On November 13, 2017, Defendant filed an Answer  
25 along with the Administrative Record ("AR"). (Dkt. Nos. 15, 16).  
26 On June 13, 2018, the parties filed a Joint Stipulation ("Joint  
27 Stip."), setting forth their respective positions regarding  
28 Plaintiff's claim. (Dkt. No. 23).

The Court has taken this matter under submission without oral argument. See C.D. Cal. L.R. 7-15.

## **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**

On June 27, 2013, Plaintiff, a former truck driver, (see AR 225), filed his SSI application alleging an inability to work because of a disability since April 20, 2010. (AR 196, 216). On November 30, 2015, an Administrative Law Judge, Joel Martinez ("ALJ"), heard testimony from a vocational expert, Elizabeth Brown-Ramos ("VE"), and Plaintiff, who was represented by counsel. (AR 50-78). The ALJ issued a decision denying Plaintiff's application on January 22, 2016. (AR 37-45).

15 The ALJ applied the five-step sequential process in  
16 evaluating Plaintiff's case. At step one, the ALJ determined  
17 that Plaintiff has not engaged in substantial gainful activity  
18 since June 27, 2013, the application date. (AR 39). At step  
19 two, the ALJ found that Plaintiff's lumbar spine degeneration is  
20 a severe impairment.<sup>1</sup> (*Id.*). At step three, the ALJ found that  
21 Plaintiff's impairments do not meet or equal a listing found in  
22 20 C.F.R. Part 404, Subpart P, Appendix 1. (AR 40). Before

<sup>1</sup> The ALJ found Plaintiff's right inguinal hernia surgical repair to be non-severe. (AR 40).

1 proceeding to step four, the ALJ found that Plaintiff has the  
2 following Residual Functional Capacity ("RFC")<sup>2</sup>:

3  
4 [Plaintiff can] perform light work . . . except [he]  
5 can occasionally perform postural activities, can  
6 occasionally climb ramps and stairs, can never climb  
7 ladders, ropes, or scaffolds, and should avoid all  
8 exposure to heights, hazards, or extreme temperatures.

9  
10 (Id.). At step four, the ALJ noted that Plaintiff is unable to  
11 perform any past relevant work. (AR 43). Relying on the VE's  
12 testimony at step five, the ALJ found that Plaintiff, with his  
13 age (forty-nine on the application date), education, work  
14 experience, and RFC, can perform the following representative  
15 jobs existing in significant numbers in the national economy:  
16 "basket filler" (Dictionary of Occupational Titles ("DOT")  
17 529.687-010) and "bagger garment" (DOT 920.687-018). (AR 44).  
18 Accordingly, the ALJ concluded that Plaintiff "has not been under  
19 a disability, as defined in the Social Security Act, since June  
20 27, 2013, the date the application was filed." (Id.).  
21

22 The Appeals Council denied Plaintiff's request for review of  
23 the ALJ's decision on April 14, 2017. (AR 1-4). Plaintiff now  
24 seeks judicial review of the ALJ's decision which stands as the  
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26 <sup>2</sup> A Residual Functional Capacity is what a claimant can  
27 still do despite existing exertional and non-exertional  
limitations. See 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1).

1 final decision of the Commissioner. See 42 U.S.C. §§ 405(g),  
2 1383(c).

3

4 **STANDARD OF REVIEW**

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6 This Court reviews the Administration's decision to  
7 determine if it is free of legal error and supported by  
8 substantial evidence. See Brewes v. Comm'r, 682 F.3d 1157, 1161  
9 (9th Cir. 2012). "Substantial evidence" is more than a mere  
10 scintilla, but less than a preponderance. Garrison v. Colvin,  
11 759 F.3d 995, 1009 (9th Cir. 2014). To determine whether  
12 substantial evidence supports a finding, "a court must consider  
13 the record as a whole, weighing both evidence that supports and  
14 evidence that detracts from the [Commissioner's] conclusion."  
15 Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001)  
16 (internal quotation omitted). As a result, "[i]f the evidence  
17 can support either affirming or reversing the ALJ's conclusion,  
18 [a court] may not substitute [its] judgment for that of the ALJ."  
19 Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006).

20

21

**DISCUSSION**

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23 Plaintiff's one claim in this action is that the ALJ failed  
24 to properly consider his testimony. (Joint Stip. at 4-14).  
25 After considering the record as a whole, the Court disagrees. As  
26  
27  
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1 set forth below, the Commissioner's findings are supported by  
2 substantial evidence and are free from material legal error.<sup>3</sup>

3

4 An ALJ's assessment of a claimant's credibility is entitled  
5 to "great weight." See Anderson v. Sullivan, 914 F.2d 1121, 1124  
6 (9th Cir. 1990); Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir.  
7 1985). "[T]he ALJ is not required to believe every allegation of  
8 disabling pain, or else disability benefits would be available  
9 for the asking, a result plainly contrary to 42 U.S.C. §  
10 423(d)(5)(A)." Molina v. Astrue, 674 F.3d 1104, 1112 (9th Cir.  
11 2012). In order to determine whether a claimant's testimony is  
12 credible, the ALJ engages in a two-step analysis. Garrison v.  
13 Colvin, 759 F.3d 995, 1014 (9th Cir. 2014).

14

15 First, the claimant "must produce objective medical evidence  
16 of an underlying impairment 'which could reasonably be expected  
17 to produce the pain or other symptoms alleged.'" Bunnell v.  
18 Sullivan, 947 F.2d 341, 344 (9th Cir. 1991) (quoting 42 U.S.C.  
19 § 423(d)(5)(A)(1988)). In producing evidence of the underlying  
20 impairment, "the claimant need not produce objective medical  
21 evidence of the pain or fatigue itself, or the severity thereof."  
22 Smolen v. Chater, 80 F.3d 1273, 1282 (9th Cir. 1996), superseded  
23 on other grounds, 20 C.F.R. § 404.1529(c)(3). Instead, the

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25         <sup>3</sup> The harmless error rule applies to the review of  
26 administrative decisions regarding disability. See McLeod v.  
27 Astrue, 640 F.3d 881, 886-88 (9th Cir. 2011); Burch v. Barnhart,  
400 F.3d 676, 679 (9th Cir. 2005) (an ALJ's decision will not be  
reversed for errors that are harmless).

28

1 claimant "need only show that [the impairment] could reasonably  
2 have caused some degree of the symptom." Id.

3

4 Second, once the claimant has produced the requisite  
5 objective medical evidence, the "ALJ may reject the claimant's  
6 testimony regarding the severity of her symptoms." Id. at 1284.  
7 Absent affirmative evidence of malingering, however, the ALJ may  
8 reject a plaintiff's testimony only if the ALJ makes "specific  
9 findings stating clear and convincing reasons for doing so." Id.  
10 In assessing a claimant's alleged symptoms, an ALJ may consider  
11 the following:

12

13 (1) ordinary techniques of credibility evaluation, such  
14 as claimant's reputation for lying, prior inconsistent  
15 statements concerning the symptoms, and other testimony  
16 by the claimant that appears to be less than candid;  
17 (2) unexplained or inadequately explained failure to  
18 seek treatment or to follow a prescribed course of  
19 treatment; and (3) the claimant's daily activities.

20

21 Id. An ALJ may also consider observations of treating and  
22 examining physicians and other third parties. Id.

23

24 Here, the ALJ found that Plaintiff's "medically determinable  
25 impairment could reasonably be expected to cause the alleged  
26 symptoms," but Plaintiff's "statements concerning the intensity,  
27 persistence and limiting effects of these symptoms are not  
28 entirely credible for the reasons explained in this decision."

1 (AR 41). The ALJ provided three clear and convincing reasons to  
2 find Plaintiff's statements about his symptoms "not entirely  
3 credible": (1) inconsistency with the objective medical evidence;  
4 (2) Plaintiff's overall treatment history; and (3) Plaintiff's  
5 activities of daily living. (AR 41-42).

6

7 **Objective Medical Evidence**

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9 Reviewing the objective evidence, the ALJ pointed out, for  
10 example, that an examination in August 2013 showed "normal muscle  
11 bulk and tone without atrophy" and "5/5 motor strength." (AR 41;  
12 see AR 358). The ALJ also remarked that in January 2015,  
13 Plaintiff "noted that he had a painful gait, [but] there was no  
14 evidence of the use of a cane." (AR 41; see AR 512). A  
15 September 2015 examination, moreover, showed "5/5 motor strength  
16 in the lower extremities bilaterally." (AR 41; see AR 542). The  
17 ALJ reasonably found such objective medical evidence  
18 "inconsistent with [Plaintiff's] allegations that he is unable to  
19 perform any work activity." (AR 41).

20

21 Plaintiff contends that the ALJ impermissibly considered the  
22 objective evidence "because a rejection of a claimant's testimony  
23 based on a lack of objective evidence is always legally  
24 insufficient." (Joint Stip. at 7-8). However, while the ALJ  
25 "may not reject a claimant's subjective complaints based solely  
26 on a lack of objective medical evidence to fully corroborate the  
27 claimant's allegations," Bray v. Comm'r of Soc. Sec. Admin., 554  
28 F.3d 1219, 1227 (9th Cir. 2009), the ALJ "must consider whether

1 an individual's statements about the intensity, persistence, and  
2 limiting effects of his or her symptoms are consistent with the  
3 medical signs and laboratory findings of record," SSR 16-3p, at  
4 \*5 (emphasis added). Indeed, "[c]ontradiction with the medical  
5 record is a sufficient basis for rejecting the claimant's  
6 subjective testimony." Carmickle v. Comm'r, Soc. Sec. Admin.,  
7 533 F.3d 1155, 1161 (9th Cir. 2008); see SSR 16-3p, at \*5  
8 ("objective medical evidence is a useful indicator to help make  
9 reasonable conclusions about the intensity and persistence of  
10 symptoms, including the effects those symptoms may have on the  
11 ability to perform work-related activities").

12

13 Here, the ALJ did not reject Plaintiff's subjective symptoms  
14 solely because of a lack of evidence to support Plaintiff's  
15 allegations. Instead, the ALJ appropriately discredited  
16 Plaintiff's statements because they are inconsistent with the  
17 medical evidence in the record, along with other evidence such as  
18 Plaintiff's treatment history and activities of daily living.  
19 Substantial evidence in the record supports the ALJ's finding  
20 that Plaintiff's statements are inconsistent with the objective  
21 medical evidence, and Plaintiff does not point to any evidence in  
22 the record to show otherwise. Furthermore, multiple physicians  
23 opined that Plaintiff can perform light work, including  
24 consultative examiner Azizollah Karamlou, M.D., and state agency  
25 reviewing physician S. Laiken, M.D. (AR 96-97, 356-60).

26

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1       Thus, the ALJ properly discredited Plaintiff's symptom  
2 testimony based on the contravening medical record. Carmickle,  
3 533 F.3d at 1161.

4

5       Conservative Treatment

6

7       In concluding that Plaintiff's treatment history  
8 contradicted his allegations, the ALJ observed that Plaintiff  
9 "was given conservative measures for treatment," such as physical  
10 therapy and pain medication. (AR 41). This is an appropriate  
11 basis for discounting Plaintiff's testimony. See Tommasetti v.  
12 Astrue, 533 F.3d 1035, 1039-40 (9th Cir. 2008) (ALJ may properly  
13 infer that claimant's pain "was not as all-disabling as he  
14 reported in light of the fact that he did not seek an aggressive  
15 treatment program" and "responded favorably to conservative  
16 treatment"); Parra v. Astrue, 481 F.3d 742, 751 (9th Cir. 2007)  
17 ("[E]vidence of conservative treatment is sufficient to discount  
18 a claimant's testimony regarding severity of an impairment.").  
19 Specifically, the ALJ remarked that Plaintiff's "pain appears to  
20 be managed with pain medications." (AR 41). The ALJ noted, for  
21 example, that in September 2015, Plaintiff told his physician  
22 that "he had pain but that it was managed with pain medications."  
23 (Id.; see AR 541). Plaintiff stated that his pain was 3/10 with  
24 medications, in contrast to 10/10 without medication. (AR 541).  
25 Aside from medications, the ALJ pointed out that Plaintiff "was  
26 referred for core strengthening" in September 2012, and he was  
27 "advised to consider pool therapy, and was scheduled for a  
28 trigger point injection" in May 2015. (AR 41; see AR 335, 489).

1 Plaintiff contends that the ALJ was "wrong" in concluding  
2 that Plaintiff's treatment has been conservative because his use  
3 of narcotic pain medications is not conservative treatment, and  
4 no other non-conservative treatment options were available to  
5 him. (Joint Stip. at 11-12). The record, however, supports the  
6 ALJ's finding that Plaintiff's level of treatment conflicted with  
7 his allegations of debilitating pain. As noted, Plaintiff's  
8 medications substantially reduced his pain, (see AR 541), and his  
9 physicians continued to prescribe this treatment, along with  
10 physical therapy and an occasional trigger point injection,  
11 rather than recommending surgery or other aggressive treatment.  
12 (See, e.g., AR 498, 503, 519, 542, 583). Nothing in the record  
13 suggests that more aggressive treatments were unavailable, and it  
14 is reasonable to infer from the lack of such treatment that  
15 Plaintiff's condition was adequately managed by the medications  
16 and thus less severe than alleged. Based on this record, the ALJ  
17 reasonably determined that Plaintiff's course of treatment  
18 conflicted with his allegations of debilitating back pain. See  
19 Crane v. Shalala, 76 F.3d 251, 254 (9th Cir. 1996) (ALJ properly  
20 considered evidence suggesting that claimant responded well to  
21 treatment in rejecting claimant's testimony); see also  
22 Tommasetti, 533 F.3d at 1040 ("The record reflects that  
23 Tommasetti responded favorably to conservative treatment  
24 including physical therapy and the use of anti-inflammatory  
25 medication, a transcutaneous electrical nerve stimulation unit,  
26 and a lumbosacral corset.").

27  
28

1       Accordingly, the ALJ properly discounted Plaintiff's  
2 subjective pain testimony on this ground.

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4       **Activities of Daily Living**

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6       Plaintiff's ability to perform various everyday activities  
7 is also a legitimate basis to discount his credibility. See  
8 Burch v. Barnhart, 400 F.3d 676, 680-81 (9th Cir. 2005)  
9 (claimant's allegations of disability properly discredited where  
10 claimant was able to care for her own personal needs, cook,  
11 clean, shop, interact with her boyfriend, and manage finances).  
12 Here, among other observations, the ALJ noted that in September  
13 2012, Plaintiff "was independent in activities of daily living  
14 and ambulatory without an assistive device," and Plaintiff also  
15 reported in September 2015 that he could perform his activities  
16 of daily living. (AR 41; see AR 335, 541). Even if Plaintiff's  
17 activities do not show that he was unimpaired, the ALJ reasonably  
18 found these admitted activities to be inconsistent with the level  
19 of impairment that Plaintiff alleged. See Molina, 674 F.3d at  
20 1113 ("Even where [claimant's] activities suggest some difficulty  
21 functioning, they may be grounds for discrediting the claimant's  
22 testimony to the extent that they contradict claims of a totally  
23 debilitating impairment.").

24

25       The ALJ also pointed to an inconsistency among Plaintiff's  
26 statements that additionally eroded his credibility. In the  
27 November 2015 hearing, Plaintiff testified that he did not use a  
28 cane, and he can walk for thirty minutes at a time, stand for

1 twenty minutes, and sit for two hours. (AR 42; see AR 67). The  
2 ALJ contrasted this testimony with questionnaire responses in  
3 July 2013 indicating that Plaintiff used a cane and could walk  
4 about twenty feet and stand or sit for about ten minutes at a  
5 time. (AR 42; see AR 231-32). The ALJ found that this apparent  
6 inconsistency in Plaintiff's reports "tends to raise questions  
7 about the reliability of [Plaintiff's] statements." (AR 42).

9           Thus, the ALJ properly discounted Plaintiff's symptom  
10 statements based on their inconsistency with his daily  
11 activities.

## **ORDER**

15           For the foregoing reasons, the decision of the Commissioner  
16 is AFFIRMED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

20 | Dated: July 19, 2018

/ S /  
ALKA SAGAR  
UNITED STATES MAGISTRATE JUDGE